



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201014073

Uniform Issue List: 408.03-00

JAN 12 2010

SE:T:EP:RA:T2

Legend:

Taxpayer A = ***

Financial Advisor B = ***

IRA X = ***

Company C = ***

Company D = ***

Amount A = ***

Amount B = ***

Amount C = ***

Date 1 = ***

Date 2 = ***

Dear ***:

This is in response to your request dated July 1, 2009, as supplemented by additional correspondence submitted on November 5, 2009, submitted on your behalf by your authorized representative, in which you request a waiver of the

60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 66, represents that she received a distribution totaling Amount A from IRA X, an individual retirement annuity under section 408(b) of the Code. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by Financial Advisor B that led to the placement of Amount A in a non-IRA account with Company D. Taxpayer A further represents that Amount A has not been used for any other purpose.

Taxpayer A and her spouse met with Financial Advisor B to review their annuity contracts at Company C. Taxpayer A maintained IRA X at Company C, and her spouse maintained a non-qualified annuity at Company C. Financial Advisor B advised Taxpayer A and her spouse to surrender their existing annuity contracts at Company C and purchase a jointly-owned annuity at Company D in order to improve their investment return. Financial Advisor B acknowledges, by letter dated November 3, 2009, that he failed to notice that Taxpayer's A's annuity at Company C was an IRA, and that his recommendation to combine the annuities was based on an erroneous foundation. Taxpayer A represents that she never intended to terminate her IRA and she believed she was rolling over her funds to another IRA investment. In his letter, Financial Advisor B also represents that Taxpayer A had no intention of withdrawing funds from her IRA, and that she trusted Financial Advisor B's recommendation.

Relying on Financial Advisor B's advice, Taxpayer A and her husband each surrendered their annuities at Company C. On Date 1, Taxpayer A received her distribution of Amount A from IRA X and her husband received a distribution of Amount B from his non-qualified annuity. Both amounts were deposited in their joint bank account, and on Date 2, Taxpayer A wrote a check for Amount C from their bank account to deposit in a jointly-owned annuity at Company D. Financial Advisor B prepared the application forms for the annuity at Company D, and Taxpayer A and her husband signed them.

Company C sent a Form 1099-R to Taxpayer A reporting the distribution of Amount A from IRA X as taxable. Taxpayer A represents that Financial Advisor B initially assured her that the Form 1099-R was incorrect, but eventually determined that he had made an error in failing to rollover IRA X to another IRA. Amount A remains in the non-IRA account with Company D.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if --

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement

pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was due to erroneous advice provided by Financial Advisor B that resulted in Amount A being placed in a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This letter expresses no opinion as to whether the IRA described herein satisfied the requirements of section 408 of the Code.

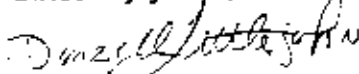
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact * * *. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

Page 5

201014073

CC. ***